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**A HOUSE DIVIDED:  
THE RIGHTS AND DUTIES OF HOMESTEADERS,  
LIFE TENANTS, REMAINDERMEN, & CO-TENANTS  
(Version 3.1)**

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## I. INTRODUCTION: COMPETING INTERESTS

Anyone who has been involved with decedent's estates has likely confronted one or all of the following scenarios:

- A person dies intestate owning separate and community property, leaving behind a surviving spouse, who is not his first spouse, along with children from a previous marriage or relationship.
- A person dies owning community and separate property which he leaves by will to someone other than his surviving spouse.
- A person either dies intestate leaving several surviving children or grandchildren or has a will devising his property to the children or grandchildren in equal undivided interests.
- A person devises only a life-estate to someone, or a surviving spouse inherits a life estate in one-third of a real estate, with the remainder passing to others.

Each of these not uncommon scenarios give rise to competing interests, particularly with respect to real estate and, more particularly, with respect to the homestead. This article will explore the often confounding relationship between the homesteader and/or life tenant and the remaindermen, or among co-tenants, and will discuss the various rights and duties between and among them.

## II. THE HOMESTEAD

### A. *What is a Homestead?*

The primary purpose of the homestead was to preserve the family as a basic unit of society. *See Hoefling v. Hoefling*, 167 S.W. 210 (Tex. 1914) (historical view of homestead exemption). The fundamental idea connected with a homestead is "that of a place of residence for the family, where the independence and security of a home may be enjoyed, without danger of its loss, or harassment and disturbance." *Cocke v. Conquest*, 35 S.W.2d 673, 678 (Tex. 1931); *Grant v. Clouser*, 287 S.W.3d 914, 919 (Tex. App.- Houston [14<sup>th</sup> Dist.] 2009, no pet.). Homestead protections are liberally construed to prevent people from losing their homes. *See Gilbreath v. Steed*, 2013 WL 2146230 at \*14 (Tex. App. - Tyler 2013); *Solomon v. Lesay*, 369 S.W.3d 540, 554 (Tex. App. - Houston [1st Dist.] 2012, no pet.).

A homestead is defined in the Texas Constitution and in the Texas Property Code and differs as to whether it is rural or urban or whether the homesteader has a family or is a single adult. *Compare* Tex. Const. art. XVI, § 51, with Tex. Prop. Code Ann. §§ 41.002(a), 41.005(b) (West 2024). The following is a summary of the extent of the homestead right:

### **Family - Urban Homestead**

- One or more contiguous lots amounting to not more than 10 acres;
- in a city, town, or village;
- used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(a), 41.005(b).

### **Family - Rural Homestead**

- 200 acres;
- not in a city, town, or village;
- used for the purposes of a home;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(b)(1), 41.005(a).

### **Single Adult - Urban Homestead**

- One or more contiguous lots amounting to not more than 10 acres;
- in a city, town, or village;
- used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(a), 41.005(b).

### **Single Adult - Rural Homestead**

- 100 acres;
- not in a city, town, or village;

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